

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

WESTERN DIVISION

UNITED STATES OF AMERICA,)	CR. 09-50029-KES
)	
Plaintiff,)	
)	
vs.)	ORDER GRANTING
)	MOTION TO SEVER
BEN STOCKMAN AND)	
JOE BRADLEY,)	
)	
Defendants.)	

Defendant, Joe Bradley, moves for severance of his trial from that of his co-defendant, Ben Stockman. Bradley alleges that Stockman has suffered a severe and extensive brain injury from a stroke or stroke-like incident and is not currently competent to proceed to trial. Bradley has been in custody on his federal charges since July 16, 2009.

Stockman has moved for a continuance based on his illness and has requested a neuropsychological evaluation to determine his competency to stand trial. Stockman does not object to Bradley's motion for severance. This is Stockman's second request for a continuance based on his medical condition.

The government objects to Bradley's motion for severance contending that Bradley has not articulated statutory grounds for severance.

While Bradley has not shown that his Sixth Amendment right to a speedy trial has been violated, Bradley has now been in pretrial custody for eight months. Because it appears that it may be some time before co-defendant Stockman is physically and mentally able to proceed with his trial, the court finds that Bradley has shown good cause for severance of his trial. Other courts faced with a seriously ill co-defendant have reached the same conclusion and granted a motion to sever. See, e.g., United States v. Barnwell, 477 F.3d 844, 847 (6th Cir. 2007) (co-defendant severed during trial due to defendant's attorney's illness); United States v. Bastone, 526 F.2d 971, 975 n.1 (7th Cir. 1975) (court granted pretrial motion to sever co-defendant due to illness); United State v Persico, 1986 WL 4699 (S.D.N.Y.) (two defendants severed pretrial due to grave illnesses). Accordingly, it is hereby

ORDERED that defendant's motion to sever (Docket 224) is granted. The trial of defendant Bradley shall proceed forward as scheduled on Tuesday, April 6, 2010, at 9 a.m., in Rapid City, South Dakota.

Dated March 12, 2010.

BY THE COURT:

/s/ Karen E. Schreier
KAREN E. SCHREIER
CHIEF JUDGE